

March 22, 2001

Honorable Norman K. Ferguson, Senate Chair
Honorable William R. Savage, House Chair
Joint Standing Committee on Utilities and Energy
115 State House Station
Augusta, ME 04333

Re: LD 1139, An Act to Ensure Access to Energy Markets for Maine's
Small Hydroelectricity Facilities

Dear Senator Ferguson and Representative Savage:

The Commission will testify in opposition of LD 1139, An Act to Ensure Access to Energy Markets for Maine's Small Hydroelectricity Facilities. We will also offer suggestions for ways that this bill might be amended if the Committee chooses to pursue an effort to aid small hydroelectric facilities. The Commission will be present at the work session and will be pleased to work with the Committee as it considers this bill.

LD 1139 would require transmission and distribution (T&D) utilities to purchase, at the average clearing price, the generation from hydroelectric facilities that generate at 5 MW or less.

We are aware of the difficulty that a small generator encounters when attempting to sell its generation into the wholesale market. The generator must belong to NEPOOL and operate under ISO-NE rules, which is costly and administratively complex. Alternatively, it can contract with a NEPOOL member to buy and resell its generation. While NEPOOL might someday develop market rules that make it economically possible for small generators to sell directly into the wholesale market, it has not done so yet. A secondary market of larger marketers willing to purchase this generation is beginning to develop, but is currently immature. With the problems of small-scale generators in mind, the Committee directed us to present a report and recommendations regarding distributed generation on October 1, 2001. Based on our investigation and interim report, we believe that a comprehensive solution to these generators' problems will be developed over the upcoming two-year period. In the meantime, it is reasonable to find ways to keep these generators operating.

Our primary concern with LD 1139 is that it would eliminate the development of the secondary market that is critical to ensuring long-term viability of small generators. We understand that one NEPOOL participant in the state will purchase

hydroelectric generation at a fixed percentage of the wholesale clearing price. We believe that development of this market will accelerate when a Generation Information System, currently under development in the region, is complete. Further development of this critical market will cease if a government-mandated procedure makes the market unnecessary.

We also believe that requiring T&D utilities to add another generation function to their responsibilities is an unwise solution to this problem. To be sure, we have required that utilities become brokers in the purchase of standard offer generation. However, we turned to this solution reluctantly and will phase out the process as soon as possible. Using the utilities (and their ratepayers) as a solution to wholesale market problems should be avoided as a matter of policy. A better solution would be to provide a credit to small hydroelectric facilities, funded from the general fund.

Another approach that we are in the very early stages of pursuing with Central Maine Power Company is to revise or eliminate some of the burdensome requirements that utilities impose on small-scale generators. We have not yet formed opinions as to which requirements can be mitigated. However, some relief is likely to result from these efforts.

If the Committee decides to pursue passage of this bill, we offer suggestions for the Committee's consideration.

First, we suggest that all costs associated with re-sale of the generation be passed through to the small hydro facilities. The utilities will incur costs to set up implementation systems, to participate in ISO-NE's daily settlement procedures, and perhaps to meter the facilities. Although these costs may be small, they should not be assigned to ratepayers.

Second, we suggest that 5 MW is too liberal a breakpoint. This bill is meant to provide protection for small, less sophisticated, local entrepreneurs. While there is no easy way to determine a cut-off, we believe that 1 MW is more representative of the target group. (Parenthetically, a 5 MW facility is about 50% larger than Augusta's recently removed Edwards Dam).

In addition, we suggest that no relief be granted to facilities that were purchased by FPL, PP&L and WPS-ESI as part of utilities' generation divestiture because these entities are well-established market players. In Maine, there are approximately 70 hydroelectric facilities with generation levels of 5 MW or less. Of those, 24 were owned by the utilities before restructuring and were divested.

Finally, many small hydroelectric facilities operate under contracts that require the utility to pay the facility a fixed rate through the term of the contract. The generation from these facilities is purchased by the entities that submit the winning bid in an auction that the Commission carries out every two years. The amounts by which the contract rates exceed the auctioned market prices are stranded costs and are paid by utility ratepayers. Because these hydro facilities already sell their output to the utilities, they do not need assistance at this time.

Attached to this testimony are two charts to help the Committee understand the types of small-scale facilities operating in Maine. The first chart lists small-scale generating facilities, showing the facilities owned by FPL, PP&L, or WPS-ESI, the facilities with expired contracts (which therefore are attempting to sell generation on the open market), and the facilities still protected by contracts. The second chart lists only hydroelectric facilities generating 1 MW or less and highlights those that must sell their output on the open market. There are only seven such contracts.

As a final comment, we suggest that, if the Committee considers passing this bill, it limit its application to a two-year transition period.

We recognize that this bill presents a policy decision for the Committee that is not within our jurisdiction to judge. However, we believe that there are impacts on the developing market and on utility ratepayers that we should bring to the Committee's attention. Because of these, we urge the Committee to vote out LD 1139 as "ought not to pass," or to amend the bill to temporarily target smaller facilities that are not now protected by contract and that were not part of utilities' divestiture. If you have any questions, please contact me.

Sincerely,

Marjorie R. McLaughlin
Legislative Liaison